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Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re ) Case No. 04-37154-elp11

ROMAN CATHOLIC ARCHBISHOP OF )  
PORTLAND IN OREGON, AND ) **DECLARATION OF JON R.**  
SUCCESSORS, A CORPORATION SOLE, ) **CONTE, Ph.D.**  
dba the ARCHDIOCESE OF PORTLAND )  
IN OREGON, )

Debtor. )  
\_\_\_\_\_ )

I, Jon R. Conte, Ph.D., under penalty of perjury under the laws of the State of Washington, hereby declare as follows:

1. I am a Professor at the School of Social Work, University of Washington, Seattle, Washington, am over the age of 18, and am competent to testify as follows:

2. I have been on the faculty at the University of Washington since 1990. In that capacity, I teach courses on social work practice, child abuse and trauma, and psychotherapy. Attached hereto is a copy of my curriculum vitae.

1                   3.       I am currently on the Editorial Board of Child Abuse and Neglect. I  
2 am the Editor of the Journal of Interpersonal Violence and the Editor of Trauma, Violence,  
3 and Abuse: A Review Journal.

4                   4.       I am the Immediate Past President and was the first President of the  
5 American Professional Society on the Abuse of Children. I am on the Board of Councilors  
6 of the International Society for the Prevention of Child Abuse and Neglect.

7                   5.       I am the author of approximately 50 scientific and academic  
8 publications in peer-reviewed journals or book chapters. Over my career, I have lectured  
9 frequently at national or international professional and scientific meetings before  
10 multidisciplinary audiences of psychologists, physicians, attorneys, social workers and other  
11 professionals.

12                  6.       I have been qualified to testify as an expert on various aspects of  
13 childhood sexual abuse, trauma and other forensic issues. I have testified as an expert in the  
14 following states and countries: Washington, Oregon, California, Illinois, Wisconsin, Florida,  
15 Virginia, New Hampshire, Colorado and Canada.

16                  7.       Until recently, I have maintained a small private practice on Mercer  
17 Island, Washington where I specialized in psychotherapy with individual youth and adults. I  
18 currently am engaged in the practice of forensic mental health. In this capacity, I have  
19 evaluated over 4,000 individual children, teens and adults who allege psychological damages  
20 from sexual abuse in childhood. I have evaluated several hundred males and some females  
21 since the mid-1980s alleging sexual abuse in childhood at the hands of clerics or others in the  
22 religious life.

23                  8.       I have been retained by the Tort Claimants Committee (the  
24 "Committee") to provide the Court with information that may be helpful in evaluating the  
25 proposal from the Archdiocese of Portland relating to notice to claimants. I have reviewed  
26 Debtor's Motion For An Order (1) Fixing a Bar Date for Filing Tort Proofs of Claim and

1 (2) Approving a Tort Proof of Claim Form, Bar Date Notices, Actual Notice Procedure, and  
2 Media Notice Program; and the Declaration of Paulette Furness In Support of Debtor's  
3 Motion.

4 9. Debtor's proposal outlines a procedure for notice to potential  
5 claimants that provides for a 90-day period in which potential claimants and their lawyers  
6 may complete and return claim forms. Debtor further claims to plan to undertake an  
7 "extensive mailing and publication procedure" (p. 4) to provide notice of the claims bar date  
8 to actual and potential claimants. Debtor suggests December 31, 2004, 5 p.m. Pacific  
9 Standard Time, as the last date and time by which claim forms must be received at the  
10 headquarters of the Archdiocese. The proposed Claim Form requests identifying information  
11 from the individual, including information about the persons involved, the timing and nature  
12 of the activities for which the claimant is asserting a claim, information about the injuries,  
13 when the claimant first realized that he or she had sustained an injury, information about the  
14 extent of damages and losses sustained, and information about professionals and others  
15 consulted by the claimant regarding the injury and claim. Debtor proposes a two-fold notice  
16 program. This involves a "plain English" notice which states "If you were abused or suffered  
17 any injury by a priest or other person working in ministry for the Archdiocese of Portland in  
18 Oregon or for a Catholic parish/school of the Archdiocese, you must act now to preserve  
19 your rights." Debtor proposes to disseminate the Notice in newspapers, diocesan  
20 publications, church bulletins, special websites, press releases and other media publicity.  
21 Basing an argument on the fact that 90 percent of current claimants reside in Oregon and  
22 10 percent in Washington, Debtor appears to plan to target Oregon and Washington,  
23 although Debtor makes vague and unspecified efforts to undertake a nationwide notice and  
24 general publicity effort as well. Debtor proposes to publish the Publication Notice as 1/8  
25 page advertisements in west coast newspapers once a week for four consecutive weeks.  
26 Debtor also proposes to publish the Notice in Catholic Diocesan publications, post notice in

1 124 parishes and 24 missions of the Archdiocese, a Debtor Chapter 11 website, and in the  
2 alumni newsletters of three Catholic high schools. Debtor also indicates it will attempt to list  
3 the Notice on the websites of two cleric abuse victim advocacy groups.

4 10. The procedure outlined by Debtor fails to recognize well established  
5 facts about the nature of childhood sexual abuse, its impact on child victims when they  
6 become adults, the complexity of the processes involved in individuals making a connection  
7 between historical events such as abuse and the ultimate injury, the nature of abuse by  
8 Catholic priests and its impact on claimants, and process and procedures which would  
9 reasonably and fairly give notice to potential claimants. I will outline information on these  
10 issues below.

11 a. Nature of childhood sexual abuse. Many aspects of childhood  
12 sexual abuse and its negative impacts on abused individuals as children and when they later  
13 become adults, challenge popular myths and misconceptions in the public about abuse and  
14 how children respond to it.

15 Estimates vary about the percentage of the population that is exposed to  
16 sexual abuse in childhood. Indeed the reasons for this variation in incidence or prevalence  
17 are a matter directly of relevance to the Court in understanding what a fair notice procedure  
18 would consist of. It appears that about 22 percent of females and 8 percent of males are  
19 sexually abused while children. (Bolen, R. and Shankpiece, 1999, Prevalence of Child Sexual  
20 Abuse: A Corrective Meta-Analysis, Social Service Review, 93(3), 281-313.) Boys are more  
21 likely to be abused by persons unrelated but known to the family. Only about 30 percent of  
22 abuse takes place one time. Most cases of childhood sexual abuse are never reported to  
23 authorities. (See e.g. Saunders, B.E., Kilpatrick, D. G., Resnick, R.A. & Lipvosky, J. A.,  
24 Epidemiological Characteristics of Child Sexual Abuse; Results from Wave II of the  
25 National Woman's Study).

26 For many victims of sexual abuse, the abuse begins at an age when the victim

1 is too young to appreciate the wrongfulness or harm it can cause. The vast majority of sexual  
2 abuse is undertaken by a person in authority over the child and often by someone who is  
3 generally trusted or respected by the child or family. Most sexual abuse takes place in the  
4 context of an ongoing relationship between victim and offender where many or even most  
5 aspects of the relationship are viewed as positive to the victim. Most, but not all, offenders  
6 engaged children in a "grooming process" where the child is gradually but systematically  
7 conditioned into sexual contact; is bribed, threatened or manipulated into not disclosing the  
8 abuse; and is made to feel a participant in his/her own abuse. (Conte, J.R., Wolf, S. & Smith,  
9 T, 1989, What sexual offenders tell us about prevention, Child Abuse and Neglect, 13(2),  
10 293-302 and Berliner, L. & Conte, J. R., 1990. The process of victimization: The victim's  
11 perspective, Child Abuse & Neglect, 14(1), 29-40.)

12 Far from being an impulsive act by offenders, sexual abuse of children is most  
13 typically undertaken by individuals who have long histories of practicing their predilections  
14 and identify vulnerable children; take efforts to use their authority, position or relationship  
15 with adults who would otherwise protect children to lull parents into believing that their  
16 children are safe with the offender; and by using their position, authority and the relationship  
17 with the child to gain sexual access to the child and maintain secrecy.

18 The negative effect of sexual abuse on human beings has been a topic of  
19 professional interest from at least the time of Sigmund Freud, who in the late 1880s  
20 postulated a connection between his patients' reports of childhood sexual contact with adults  
21 and the illnesses that brought them to see Dr. Freud.

22 In an authoritative summary of trauma effects (Briere, J., Child Abuse  
23 Trauma, 1992, Sage Publications, Newbury Park, CA), University of Southern California  
24 Professor John Briere, Ph.D., has pointed out that child abuse can lead to the following  
25 psychological symptoms: post-traumatic effects such as intrusive recollections of sexual  
26 abuse incidents; cognitive distortions such as beliefs that individual is only good for having

1 sex or that the world is unsafe; altered emotionality, including depression and anxiety;  
2 dissociation, impaired self-reference or a profoundly negative view of oneself and one's  
3 skills and abilities; disturbed relatedness such as the inability to maintain healthy  
4 relationships or a sense of isolation and separation from others; intimacy disturbances which  
5 include altered sexuality, assumptions regarding aggression in relationships, a tendency  
6 toward adversariality, manipulation, and aggression in relationships; and avoidance as seen  
7 in the abuse of drugs or alcohol, suicidality or other tension-reducing behaviors.

8           The symptoms of trauma and abuse tell only part of the story about trauma  
9 effects. It is not well understood why symptoms develop. Some symptoms (effects) may  
10 serve a functional purpose in the survivor's life. For example, some symptoms may  
11 represent learned behaviors (*e.g.*, that you can use sexuality to deal with negative feelings).  
12 Some symptoms may serve different individual purposes. One individual may engage in  
13 self-injurious behavior (such as cutting himself) to express rage, while another may engage in  
14 the same behavior to stop dissociation. It is not always possible to understand the specific  
15 function a symptom serves in an individual's life.

16           Nor it is clear why symptoms appear when they do. Some children are  
17 symptomatic while the abuse is taking place. Others may not become symptomatic until  
18 after disclosure. Many victims of childhood sexual abuse may be symptomatic for years but  
19 do not recognize the origins of the symptoms. Some victims of childhood sexual abuse may  
20 not become symptomatic until years into adulthood. Some of these find the beginning of  
21 difficulties in their lives come when they are reminded of the child abuse (*e.g.*, by media  
22 accounts of cleric abuse) or when they are no longer driven by focus on families, careers and  
23 early adulthood issues. Clinically, I have evaluated individuals who appear to have lived  
24 relatively successful lives and then suddenly after the place where they were abused (*e.g.*, a  
25 children's home) or the person who abused them became public, experienced considerable  
26 deterioration in functioning (*e.g.*, becoming alcoholic, losing a job, experiencing a divorce).

1 It is a truism in mental health that many adverse childhood events, such as  
2 family breakup, parental alcoholism or childhood sexual abuse, do not become issues which  
3 some children deal with until much later in life. The child whose parents divorce may be sad  
4 at the time but not exhibit profound inability to maintain healthy, adult relationships until  
5 much later in adulthood, when relationships become a central aspect of development. At the  
6 time difficult or traumatic experiences are taking place, child development pushes the child  
7 to bury, hide from or separate from the stressing event. This is especially true for events  
8 such as sexual abuse that most typically are associated with feelings of guilt, shame and  
9 confusion. Even when the child knows that the sexual abuse is wrong, the child feels a sense  
10 of duplicity in having engaged in a "bad behavior." When the abuse is undertaken by a  
11 person in authority, especially God's representative on earth in the person of the Catholic  
12 priest, the child is unable or unwilling to tell others about the abuse. In some cases the priest  
13 who has abused the child has then instructed the child to make a confession to him for the  
14 abuse as if the child were the person who had sinned.

15 At the same time, occasionally in my evaluation of individuals abused by  
16 priests, the individual reports having told someone, such as a parent, and not having been  
17 believed or having been punished for saying such bad things about a man of God. Like all  
18 mental skills, denial, minimization, avoidance and rationalization become ways that the child  
19 victim pushes the sexual abuse from conscious memory. Many people I have evaluated  
20 report that they did not think about the sexual abuse for years, even decades, after the last  
21 incident of sexual abuse. These ideas illustrate why a fair notice procedure will be complex  
22 and require considerable investment of expertise, time and funds to accomplish.

23 b. The processes involved in an individual making a connection  
24 between historical events, such as abuse and injury. It is a truism of psychotherapy and  
25 mental health that most individuals come into therapy only after years of suffering. Denial  
26 and minimization of the nature and level of one's problematic functioning is common.

1 Projecting or making the problem belong to someone else is also common. For example, the  
2 individual who drinks to intoxication every day of the week believes he is not an alcoholic  
3 because he only drinks beer and not whiskey. Likewise, the domestically violent man  
4 believes that his actions are appropriate responses to his partner's failure to have dinner ready  
5 when he wants it.

6 As the outline of the effects of sexual abuse above illustrates, these are not  
7 symptoms or aspects of functioning that people take pride in. Being depressed all the time,  
8 having sexual difficulties, drinking to excess or becoming enraged when your boss gives you  
9 a work assignment (*i.e.*, troubles with authority) are aspects of living that may be linked to  
10 sexual abuse in childhood. But they are often mental health problems that the carrier of the  
11 problem does not understand, avoids thinking about, or blames on someone or something  
12 else.

13 Many people who suffer conditions such as these place erroneous causality on  
14 factors that are actually unrelated to the condition. The depressed person blames feelings on  
15 a lousy job. The alcoholic claims a physical addiction. The angry person blames his  
16 unskilled boss and not the fact that he has problems with authority flowing from having been  
17 abused in childhood by an authority figure.

18 Feelings that some victims of childhood sexual abuse experience, such as  
19 anger or guilt, are not injuries. Feelings are complex emotional and physical reactions that  
20 may have automatic and largely unconscious cognitive correlates. An adult victim of sexual  
21 abuse in childhood may be generally angry at all authority or use alcohol to keep from  
22 feeling angry and have no realization of the original event which first produced the anger.

23 Emotional reactions become injuries when the individual uses behaviors to  
24 manage those feelings. For example, guilt is an emotional reaction that becomes an injury  
25 when the sufferer drinks alcohol to excess to keep from feeling guilt. Anger becomes an  
26 injury when it leads to unreasonable outbursts of anger that interfere with daily living or in



1 acts of violence. For example, the angry person alluded to in the previous paragraph  
2 illustrates this point. Anger becomes an injury when it impacts behavior, such as in domestic  
3 violence or depression. The angry male may consciously but erroneously believe that his  
4 anger is from how his boss talks to him and not understand that the behavior of his boss  
5 reminds him of being told by an adult to be sexual when he was a child.

6           Understanding the connection between an event and an injury requires a level  
7 of psychological mindedness. It requires some level of insight or appreciation that behavior  
8 and other psychological processes are causally associated with events that may not have been  
9 thought about for years. It requires a degree of openness or willingness to forgo cognitive  
10 processes such as defenses (*e.g.*, denial) that serve to protect the individual from  
11 acknowledging the thoughts that cause anxiety (*e.g.*, “my drinking really is a problem and I  
12 am causing my wife and children worry when I drink”).

13           Debtor faces quite a challenge in constructing a notification procedure that  
14 will target individuals who are in the midst of defending against painful memories of abuse  
15 or who do not yet understand the nature of the origins of their symptoms or problems. It is a  
16 particular problem since so little is understood about when people come to make such  
17 connections or what conditions are associated with making such connections.

18           Fair notice requires that first the potential claimant be in fact exposed to the  
19 Notice. Then it requires that the potential claimant identify himself as a person belonging to  
20 the group of people for whom the Notice is intended. Then the individual must consider  
21 whether he in fact had the experience of being “harmed,” that it did in fact cause problems in  
22 his life, and in order to do any of this he must be able to overcome the natural avoidance and  
23 defense which has protected him over a life time from dealing with the pain and negative  
24 effects of the abuse. Finally, he has to come to a decision that making a claim will outweigh  
25 all the negative costs (*e.g.*, feelings of guilt or shame, or demands on psychological energy  
26 and time) of acknowledging and being identified as a victim of childhood sexual abuse.

1 I believe that fairness would require a notification procedure that is distributed  
2 in the places mostly likely to identify potential claimants. It would need to be made often  
3 enough to be noticed by potential claimants. It needs to be made in ways that increase the  
4 likelihood or would aid the potential claimant in making a connection between childhood  
5 sexual abuse and psychological damage done by the abuse and present in their lives at the  
6 time of the notice. Fair notice would require a process that helps the individual understand  
7 what conduct Debtor or its agents engaged in and what types of behavior or functioning may  
8 constitute an injury. Notice would have to be given in a way to get the attention of possible  
9 claimants and at a time that they might be receptive to hearing such a message.

10 c. Debtor's Proposed Notice Process. Debtor proposes a process  
11 that is particularly problematic and unlikely to lead to the identification of a substantial  
12 number of claimants. The problems in the proposed process are as follows:

13 (1) Plain English Notice. The proposed Notices employ  
14 two broad, general terms of “**abuse**” and “**suffered injury.**” Contrary to popular  
15 misconception, many victims do not call or understand what happened to them as “abuse.”  
16 For example, a boy victim might have been genitally fondled but hold a belief that only girls  
17 are abused or that abuse only involves oral-genital contact. “Suffering” and “injury” are  
18 particularly abstract terms. An individual may be angry but believe that injury refers only to  
19 physical damage, such as broken bones or infectious diseases. It is very likely that the  
20 general public fails to understand that the term “injury” is used by the Centers for Disease  
21 Control and Prevention to refer to both physical and psychological injury. Furthermore,  
22 gender role stereotypes and some cultural norms dictate stoicism. For that reason, many  
23 people will not admit to “suffering,” although they have experienced abuse, and furthermore  
24 may not understand that suffering and injury may refer to psychological impacts such as  
25 alcohol abuse or sexual dysfunction.

26 The issue of the definition of the target behavior has been one that the field of

1 sexual abuse has long dealt with. For example, early sexual abuse researchers tried to  
2 understand why different studies of the prevalence of childhood sexual abuse in the general  
3 population ranged from 15 percent to 62 percent of woman. (Wyatt, G. E. and Peters, S. D.,  
4 1986, Methodological considerations in research on the prevalence of child sexual abuse,  
5 Child Abuse & Neglect, 10, 241-251.) As noted by the authors:

6 “A feature common to Wyatt’s and Russell’s studies is the  
7 emphasis on questions pertaining to particular types of sexual  
8 behavior. The use of behaviorally specific questions may  
9 facilitate recollection of abuse incidents by clarifying for the  
subject the nature of the experiences being inquired about or by  
triggering memories that might not be retrieved in association  
with more general question.” (p. 248.)

10 In another research report, the use of more behaviorally specific questions  
11 increased the rate of identification of victims by 14 percent (Wyatt, G. E. and Peters, S. D.,  
12 1986, Issues in the definition of child sexual abuse in prevalence research, Child Abuse &  
13 Neglect, 10, 231-240.). In a study with college student subjects, Fisher et al., 2000,  
14 compared behaviorally specific questions against the type of general items used in the  
15 National Crime Victimization Survey and found 20 times more sexual assault was revealed  
16 in a formal experimental design.

17 Caution to researchers and practitioners about not using broad, vague  
18 questions to identify individuals who have had certain abusive experiences has been well  
19 known for some time in the abuse field. An early and interesting study confirms this general  
20 rule. Berger and colleagues (Berger, A.M., Knutson, J.F., Mehm, J.G, Y Perkins, K.A.,  
21 1990, The self-report of punitive childhood experiences of young adults and adolescents,  
22 Child Abuse & Neglect, 1990, 12, 251-262) employed a questionnaire to study childhood  
23 disciplinary practice in a sample of over 4,500 college students. The authors note “The  
24 present study also indicates the importance of assessing discrete discipline events rather than  
25 asking whether persons had been abused. Most of the persons in the present study who met  
26 the more stringent abuse criterion failed to describe themselves as having been abused”

1 (p. 260).

2 In a study of 153 adult women who had been seen in the 1970s as children in  
3 a large hospital with medical findings consistent with sexual abuse, the women were  
4 re-interviewed in 1990 and 1991. Thirty-eight percent did not recall the abuse that they had  
5 reported 17 years earlier. As noted by Bolen and Shankpiece (1999, Prevalence of child  
6 sexual abuse: a corrective metanalysis. Social Service Review, 73, 281-313) the nature of the  
7 question asked in the re-interview effected how many women disclosed the abuse. Eighty  
8 percent disclosed after four general questions and 90 percent after eight questions. Of  
9 interest, after all 14 questions, 12 percent of the women still did not report abuse that had  
10 been medically confirmed in their childhood.

11 The Court will want to note that there is clear research evidence that some  
12 victims of childhood sexual abuse will fail to confirm the abuse when asked later in  
13 development. Several studies conducted in the early years of modern interest in childhood  
14 sexual abuse have pointed to this harsh reality. For example, Lawson and Chaffin (Lawson,  
15 L. & Chaffin, M., 1992, False negatives in sexual abuse disclosure interviews, Journal of  
16 Interpersonal Violence, 1992, 7, 532-542) report on a sample of children positive for STI  
17 infections who were interviewed by trained child interviews and found that about 40 percent  
18 did not report the sexual contact.

19 In another study of particular relevance to the issue before the Court, Femina  
20 and colleagues (Femina, D.D., Yaeger, C.A. & Lewis, D.O., 1990, Child abuse: adolescent  
21 records vs. adult recall, Child Abuse & Neglect, 1990, 14, No. 2, 227-231) compared  
22 information about physical abuse obtained during psychiatric evaluations during adolescence  
23 with information obtained during follow-up interviews in a sample of adults and found that  
24 38 percent of subjects provided discrepant information as adults from what they had reported  
25 as teens. Of particular note for our purposes here is the reasons given by some of the  
26 subjects for why they provided different information as adults then they did as teens. The

1 authors note “embarrassment, a wish to protect parents, a sense of having deserved the abuse,  
2 a conscious wish to forget the past, and a lack of rapport with the interviewer” were reasons  
3 given (p. 229). It would not be hard to imagine that adult victims of childhood sexual abuse  
4 by clerics would not want to report their abuse for the same reasons or because they did not  
5 wish to cause distress to their own aging parents who remain devoted Catholics and have no  
6 knowledge of the abuse of their now adult child.

7 The issue of fairness seems to require that Debtor give adequate notice and  
8 give it over a sufficiently long period of time that potential claimants will have an  
9 opportunity to fully consider whether or not to bring a claim forward.

10 The importance of asking behaviorally specific questions about a range of  
11 specific sexual behaviors rather than global questions is consistent with assessment of  
12 traumatic events in general. For example, in a just published chapter on assessment of  
13 trauma, Schlenger and colleagues (Schlenger, W. E., Jordan, R. K., Caddell, J. M., Ebert, L  
14 and Fairbank, J.A., Epidemiological methods for assessing trauma and PTSD in John Wilson  
15 and Terence Keane (eds), Assessing Psychological Trauma and PTSD, 2004, Guilford Press,  
16 New York, 226-261) advise the following:

17 (a) Begin by providing a context for the assessment by  
18 explaining the nature of the extreme events so that the intent of specific questions will be  
19 clearer and will focus the respondent’s attention on the kinds of events of interest.

20 (b) Include behaviorally specific, operational questions  
21 (e.g., asking a series of detailed questions about specific sex acts, such as “has anyone ever  
22 made you have anal sex by force or threat of harm?” rather than a global question such as  
23 “have you ever been sexually assaulted?”). You might use less severe levels of abuse to be  
24 less shocking.

25 A related problem to the definitional one is that many of the symptoms caused  
26 by the conduct of Debtor and its agents’ behavior serves the purpose of making potential

1 claimants unaware of the injury at all or tend to make claimants under-report injury.  
2 Nationally recognized trauma researcher, John Briere, Ph.D. notes this in his recent book  
3 Psychological Assessment of Adult Posttraumatic States (1997, American Psychological  
4 Association, Washington, D.C.):

5 “Because all living organisms tend to withdraw from noxious  
6 stimuli, it is not surprising that traumatic events can motivate  
7 the development of avoidance strategies. This may take the  
8 form of emotional or cognitive suppression, denial,  
9 dissociation, memory distortion, substance abuse, or  
10 involvement in activities that numb or distract.” (P. 63-4.)

11 The implication of this seems obvious. Notice must be sufficiently powerful  
12 and frequent to overcome the damage done by the abuse that serves to make potential  
13 claimants avoidant, unaware, dissociative, or fails to trigger remembering of relevant  
14 experiences. Certainly small advertisements in newspapers are going to be inadequate.  
15 Repeated notice in behaviorally specific language will be necessary before potential  
16 claimants understand that it is in fact what happened to them in childhood that is being  
17 addressed in the Notice.

18 Stimulated or cued recall is likely to increase recall. Pictures of known  
19 pedophile priests as they looked at the time of the abuse, names of specific parishes or  
20 schools or other institutions where Debtor knows sexual abusing priests were or where  
21 numerous allegations have already arisen and the time periods over which abuse was likely to  
22 have taken place will increase the ability of potential claimants to know what conduct, taking  
23 place in what setting, and by what individuals is the focus of the Notice. For example, one  
24 preamble to the specific abuse questions might read “If you where a student at (Name of  
25 School) during the years X to Y and had contact with Father W, this information may apply  
26 to you.”

(2) Means of Notice. Debtor proposes to disseminate the Notice in  
newspapers, diocesan publications, church bulletins, special websites, press releases and

1 other media publicity. Basing an argument on the fact that 90 percent of current claimants  
2 reside in Oregon and 10 percent in Washington, Debtor appears to plan to target Oregon and  
3 Washington. There are several problems with this plan.

4 As noted immediately above, the Notice has to be powerful and relatively  
5 persistent for it to come to the awareness or attention, and then be understood, by potential  
6 claimants. It can be argued that the most deserving claimants are those most significantly  
7 damaged by the abuse and therefore more likely to suffer symptoms that make seeing and  
8 understanding the Notice most difficult.

9 The proposed means of notice is problematic for other reasons. First, only a  
10 small percentage of the adult population gets information from newspapers. One of the  
11 effects of abuse by clerics, in my experience in evaluating several hundred such victims, is  
12 that they reject the Catholic Church and often religions altogether. It is unlikely that  
13 publication of the Notice in church bulletins or alumni newsletters is likely to reach many  
14 potential claimants. I am not an expert on population mobility, but I understand that out-  
15 migration is significant in the western states. Certainly the Court can obtain estimates of out-  
16 migration from the Archdiocese of Portland over the years since 1945 or so, which will assist  
17 the Court in this regard. It has been my experience that often victims of clerics do in fact  
18 move away from home communities in an effort to reduce or eliminate exposure to the  
19 reminders such as driving past their old school or church or other places where the abuse  
20 took place. The use of current case data to argue that most potential claimants reside in the  
21 Northwest is not useful since it may well be that the most significantly damaged potential  
22 claimants moved farther away to get away from reminders of the abuse.

23 Certainly Debtor is correct that publication of a revised Notice is important.  
24 Certainly newspapers and periodicals are potential sources of publication, although it would  
25 appear that either direct mailings or a concerted media campaign would be more effective in  
26 reaching potential claimants. A media expert will be helpful in identifying what types of

1 media are most likely to reach the most people and how frequent that exposure has to be to  
2 reach what percentage of the population. A well-known and respected spokesperson for  
3 these announcements would also be helpful. Additionally, adult victims of cleric abuse who  
4 can talk about the process of understanding the "injury" done by the abuse and the  
5 consequences of disclosing may be the most credible individuals to talk to potential  
6 claimants via a range of Notice procedures.

7 A professionally designed public service campaign to provide notice to  
8 potential claimants is more likely than notices in newspapers to result in actually identifying  
9 potential claimants harmed by the abuse. It is clear, however, that this will not take place  
10 over the short term as media advertising space is consumed with local and national election  
11 advertisements. Additionally, it is clear that such Public Service Announcements will need  
12 to be frequent and widespread. As noted PSA expert Charles Atkin and colleague (Atkin, C.  
13 and Schiller, L., Shouting To be Heard):

14 "So how much (media) is enough? Again, it depends. As a  
15 general rule, it might only take seeing a message a few times  
16 before the most receptive people can recognize the catchiest  
17 slogan, or learn a new fact, or perform a relatively easy task.  
18 However, if a public service campaign wants to achieve the  
19 same effect with half of the audience members, the message  
20 probably needs to reach them about ten times \* \* \* a person  
21 needs to hear the message between eight and eleven times to  
22 have it register." (P. 25)

23 I would also argue that the Christmas holiday period is problematic for many  
24 reasons. People are terribly busy and preoccupied, and family gatherings may reactivate old  
25 patterns and memories. For that reason, I would suggest a notice process and end date that  
26 avoids holidays; especially holidays with religious significance.

27 Fair notice should be worded in ways that potential claimants can understand  
28 and that speak to some of the reasons that the adult victim of childhood abuse by clerics have  
29 not come forward. Language in the notice should address feelings of responsibility,  
30 confusion, embarrassment, guilt, shame and other reasons for not disclosing (*e.g.*, to protect



1 aged parents or because the individual is pretending not to have any difficulties).

2 (a) Who is the target audience? Debtor faces an  
3 interesting problem similar to that confronted by epidemiologists who study disease states in  
4 the general population or other researchers. This problem involves how the potential  
5 claimant group is defined and how best to go looking for that group.

6 No one knows how many children over the last 70 years have been abused by  
7 clerics or other agents of the Archdiocese. Current experiences in litigation of claims  
8 indicate that most claimants are males, although some are females. Most were Catholic at  
9 the time of the abuse, although some were not. Most were abused in local parishes, although  
10 some were abused in juvenile correctional facilities, residential treatment homes, hospitals or  
11 other locations.

12 If only 9 percent of males in the general population is abused, and a smaller  
13 percentage of these are Catholic, then in relative terms the true number of potential claimants  
14 is a very small percentage of the general population. In research terms, sexual abuse of  
15 Catholic children is a rare event in the general population. It may be a somewhat less rare  
16 event in Catholic communities, although it certainly appears to me to be a relatively rare  
17 event even in those parishes that suffered under a pedophile priest or priests.

18 An adequate sampling procedure for a rare event in a large population requires  
19 a great deal of work (attempts at contacting the potential claimants) for a relatively weak  
20 yield (e.g., many non-Catholics or Catholics who were not abused are going to be  
21 "contacted" or exposed to the Notice in order to find the relatively small number of  
22 claimants). It will require multiple efforts by a range of methods to actually identify  
23 claimants. It would certainly require more of an effort than that proposed by Debtor. Indeed,  
24 if one wants not to really locate claimants, then one looks in the wrong place with little  
25 effort.

26 Several mechanisms are available to Debtor that would have a higher

1 likelihood of actually identifying potential claimants in the general population:

2 Debtor must have the employment histories of priests and other agents who  
3 have been the subject of complaints over the years. Locations where these individuals  
4 worked and resided could be especially targeted for notice. Debtor certainly has the names  
5 of parish families and children who attended parish schools, church camps and other  
6 facilities, and these families and individuals could be targeted for Notice.

7 A major problem in fair notice is that many, if not most, of the claimants are  
8 now adults and likely to be living in their own households. Parish and church records that  
9 most likely contain the family names of potential claimants are for the parents of potential  
10 claimants, not claimants. There are many reasons that aging Catholic parents of potential  
11 claimants cannot, are unable to or are unwilling to entertain the idea that their child(ren) were  
12 harmed in the past by a Catholic cleric. An alternative method for providing a revised notice  
13 would be to send the notice to every household in whatever geographic area the Court  
14 ultimately decides is appropriate and fair. In my opinion, the western states is a fairer target  
15 pool than just the coastal states or the entire United States, although potential claimants are  
16 likely to reside throughout the United States.

17 (b) Adverse reactions to Notice. Debtor and the  
18 Court face an ethical situation that is quite akin to that of university professors who teach  
19 about trauma or child abuse. Some students in classes dealing with trauma or abuse, and  
20 indeed many people in the community who will be exposed to the revised notice, will have  
21 trauma histories. Estimates of the lifetime exposure to trauma of all kinds vary, with some  
22 reports indicating that between 36 percent to 87 percent of females and 43 percent to  
23 92 percent of males have exposure to at least one traumatic event. One estimate is that one  
24 out of 12 adults meet diagnostic criteria for post traumatic stress disorder sometime in  
25 adulthood. For some number of these individuals a fair notice procedure for potential  
26 claimants will destabilize or remobilize their own trauma histories causing, at a minimum,

1 emotional distress and for some cases significant deterioration in functioning. As noted by  
2 Martin and colleagues (Martin, J.L., Perrott, K., Morris, E.M. & Romans, S. E., Participation  
3 in retrospective child sexual abuse research: beneficial or harmful? What women think six  
4 years later, Linda M. Williams and Victoria L. Banyard, Editors, 1999, Sage Publications,  
5 Thousand Oaks) in a discussion on the ethics of research on childhood sexual abuse in the  
6 general community:

7 “One potential ethical criticism of CSA research \* \* \* is that a  
8 community sample will probably include a large number of  
9 potential participants with negative experiences who would not  
10 talk about their experiences by choice—the implication being  
11 that asking them to do so may be harmful. This is related to  
12 another possible criticism, that inviting participation is going  
13 against the suppression or denial that abused women frequently  
14 use as a coping strategy.” (P. 157.)

15 While this does not mean, in my opinion, that fair notice cannot be given, it  
16 does mean that procedures and processes for dealing with adverse reactions to notice must be  
17 anticipated. This can include: information contained within the notice about community  
18 resources for help or the identification of victim advocate or support groups, and a special  
19 web site constructed as part of the notice procedure that contains information for potential  
20 claimants and non-claimants who are distressed or traumatized by the notice procedure.

21 11. Recommendations. Based on my knowledge and expertise in  
22 childhood sexual abuse and research methodology, I respectfully urge the Court to consider  
23 the following as a fair and adequate means of Notice.

24 a. A notice/flyer should be designed by a panel of experts on  
25 childhood sexual abuse, advertising and epidemiology using behaviorally specific language  
26 to describe the specific conduct of Debtor and Debtor’s agents that is of concern and the  
potential injuries that may result. It would be extremely important that this notice be  
evaluated by panels of adult victims, especially victims of Catholic clerics, to obtain their  
insights about how effective such a Notice would have been to them. This panel may include

1 experts who have had no role in previous litigation as experts for plaintiff or Debtor.

2                   b.       This revised notice should be printed as not less than half-page  
3 advertisements in target area newspapers and other periodicals at a frequency of publication  
4 based on latest data on the number of times publication is necessary to elicit the highest  
5 response rate.

6                   c.       A Public Service Announcement (PSA) based on the revised  
7 notice should be prepared and aired in target markets at a rate and for a duration that the  
8 latest market research indicates necessary to reach potential claimants who are likely to be  
9 difficult to reach.

10                  d.       The revised notice should be sent to every family whose name  
11 appears on parish registries, parish schools' lists or other lists between 1945 and the present.  
12 The notice should be mailed to these addresses with address correction requested not less  
13 than three times over a six-month period.

14                  e.       The Court should set a bar date consistent with expert advice  
15 about the length of time that development of a revised notice, and the development and  
16 implementation of a public service campaign, will require to reach not less than 80 percent of  
17 the potential claimant pool.

18                  f.       The Court should establish an independent panel of mental  
19 health professionals who can screen claimants and who can answer questions about sexual  
20 abuse and its injury on individuals.

21                  g.       It must be recognized that potentially those claimants who are  
22 the mostly likely, able or willing to come forward have already done so. Potential claimants  
23 who have not yet come forward may require some period of time to consider the  
24 consequences of coming forward. This process of evaluation can certainly be aided by  
25 information provided by Debtor in brochure and web-based formats, but the process of  
26 deciding to disclose will nonetheless be a difficult one for some potential claimants and

1 fairness would seem to require that they be given some substantial amount of time to make  
2 such a once-and-for-all decision with such profound consequences.

3 DATED this 8<sup>th</sup> day of October, 2004.

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JON R. CONTE, Ph.D.

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **DECLARATION OF JON R. CONTE, Ph.D.** on the parties on the attached List of Interested Parties by:

☒ mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

☐ causing a copy thereof to be hand-delivered to each party at each party's last-known address on the date set forth below;

☐ sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each party's last-known address on the date set forth below;


☐ faxing a copy thereof to each party at such party's last-known facsimile number on the date set forth below; or

☐ e-mailing a copy thereof to each party at such party's last-known e-mail address on the date set forth below.

DATED this 15th day of November, 2004.

TONKON TORP LLP

By

  
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